

# STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION  
302 W. WASHINGTON STREET, SUITE E-306  
INDIANAPOLIS, INDIANA 46204-2764

<http://www.state.in.us/iurc/>  
Office: (317) 232-2701  
Facsimile: (317) 232-6758

IN THE MATTER OF INDIANA OFFICE OF )  
UTILITY CONSUMER COUNSELOR'S )  
COMPLAINT AND REQUEST FOR COMMISSION )  
INVESTIGATION OF LCR )  
TELECOMMUNICATIONS, INC. FOR VIOLATIONS )  
OF INDIANA CODE §§8-1-29-5 AND 8-1-29-5.5, )  
REQUEST FOR CIVIL PENALTIES UNDER I.C. )  
§ 8-1-29-7.5, REQUEST FOR REVOCATION OF )  
LCR'S CERTIFICATE OF TERRITORIAL )  
AUTHORITY, AND REQUEST FOR ALL OTHER )  
APPROPRIATE RELIEF )

CAUSE NO. 41546-SC-04

**FILED**

**AUG 31 2004**

INDIANA UTILITY  
REGULATORY COMMISSION

**BY THE COMMISSION:**

**David W. Hadley, Commissioner**

**Lorraine Hitz-Bradley, Administrative Law Judge**

You are hereby notified that on this date the Indiana Utility Regulatory Commission ("Commission") has caused the following entry to be made:

On August 3, 2004, the OUCC filed its *Request for Administrative Notice*, in which it requested that the Commission take administrative notice of all complaints filed against LCR since January, 2003, and provided a list of those complaints attached to the testimony of Brent Shike. On the same day, the OUCC filed its prefiled testimony in this matter, consisting of the testimony and exhibits of Ronald Keen, Brent Shike, and Kesa Turpin.

On August 10, 2003, LCR filed its *Motion to Strike and Motion for Expedited Pre-Hearing Ruling on Evidentiary Matters* ("Motion"). LCR argued that the documents that the OUCC requested to have the Commission take administrative notice of had not been produced, and therefore the request should be denied under 170 I.A.C. 1-1.1-21(1)(2). Further, LCR asserted that the customer complaints attached to the OUCC's testimony should be excluded on hearsay grounds, because they consisted "of unsworn summaries of IURC CAD [Consumer Affairs Division] analysts of unsworn individual customer complaints." Additionally, LCR argued a number of hearsay and relevance objections relating to documents sought to be produced or entered into evidence.

The Presiding Officers, being duly advised in the premises, hereby find as follows:

The OUCC's Request for Administrative Notice is granted, the extent that the OUCC provides copies of the referenced documents within fourteen (14) days of the date of this entry to LCR and all other parties; if the OUCC does not do so, the request is deemed denied. The OUCC sufficiently

described the documents at issue to give LCR notice of the content. Further, as this investigation is centered on allegations of LCR's slamming, LCR can reasonably have expected that documentation regarding previous complaints filed with this Commission would be offered into evidence. The documents are relevant and go to the weight of the evidence, rather than their admissibility.

LCR's Motions are denied. As to the hearsay objections regarding the copies of CAD complaints, the complaints fall within several of the hearsay exceptions. They are both business and public records, regularly kept in the course of business, pursuant to Ind. Evid. R. 803(6) and 803(8). The fact that IURC CAD analysts did not swear to their authenticity does not change their indicia of reliability. They are recollections recorded by the CAD analysts of the consumer complaints, close in time to the alleged slamming event, and serve as a recitation of the customer's complaint. Ind. Evid. R. 803(5). In themselves, they are allegations, and are fairly admitted for the purpose of proving the existence of the complaints themselves. Further, they are clearly records that fall under the rubric of 170 I.A.C. 1-1-21(j), in which we may take administrative notice of documents filed with the commission.

As to the determination of "justified" complaints, upon which the OUCC bases its request for a fine to be imposed upon LCR, and for which LCR says it was not given a full and fair opportunity to address, no determination shall be made at this time. Both the OUCC and LCR shall file, on or before the date of hearing, any and all documentation regarding notification to LCR of the CAD's "justified" determination.

LCR's motion to strike portions of the OUCC's testimony is denied. The testimony at issue goes to the weight of the evidence, rather than its admissibility. LCR's request for the production of witnesses is denied. Consistent with our statute, once an allegation of slamming is made, it falls upon the carrier to provide documentation showing that the change was, indeed, authorized. A determination of whether or not the slam occurred is made by the state commission. We do not find a reference to a requirement, or a right on the part of the carrier, to call subscribers as witnesses. *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 1508 (released December 23, 1998).

LCR shall respond to the OUCC's data requests regarding slamming in other jurisdictions. In addition, LCR shall provide, on or before the date of evidentiary hearing, all third-party-verifications requested by the OUCC relating to the slamming cases at issue in this cause.

**IT IS SO ORDERED.**

David W. Hadley  
David W. Hadley, Commissioner

Lorraine Hitz-Bradley  
Lorraine Hitz-Bradley, Administrative Law Judge

Nancy E. Manley  
Nancy E. Manley, Secretary to the Commission

Date

August 31, 2004